

December 3, 2007

Frank Rizzo
2845 45th Street
Highland, Indiana 46322

*Re: Formal Complaint 07-FC-354; Alleged Violation of the Open Door Law by the
Hanover Community School Corporation*

Dear Mr. Rizzo:

This advisory opinion is in response to your formal complaint alleging the Hanover Community School Corporation (“Corporation”) violated the Open Door Law (“ODL”) (Ind. Code 5-14-1.5) by failing to provide proper notice for a meeting, failing to provide adequate information to the members of the public in attendance at the meeting, and indicating it would refuse to recognize you to speak at future meetings. You initially submitted an informal inquiry on November 15, 2007 regarding these issues but have since submitted a formal complaint. I now address all issues presented in both the informal inquiry and the formal complaint. It is my opinion the Corporation violated the Open Door Law by failing to provide a time for the November 13 meeting in the meeting notice. It is my opinion it is not a violation of the ODL for the Board to refuse to allow you to speak at its future meetings. Finally, the Board may have violated the ODL if it took final action on agenda items and in doing so referred to the items only by agenda number or item.

BACKGROUND

In your complaint you allege the Corporation scheduled a meeting of the Corporation Board of Trustees (“Board”) for November 13, 2007. You allege the notice for the meeting indicated the time for the meeting as “immediately following the public hearing on the proposed lease for the new middle school.” You inquire whether, if the notice violates the ODL, the votes or actions of the Board may be declared void. You further allege that at the meeting you were allowed to ask a question during the public comment portion of the meeting. Following the Board meeting, you were told that you would not be recognized to speak in the future because you do not live within the Corporation district. Finally, you allege that the meeting agenda noted the first reading of several proposed policy changes. When you inquired as to the nature of one of the changes, you were told you could obtain the information the following day. You allege that during the meeting the proposed policy changes were neither read aloud nor distributed in writing.

You filed this complaint on November 26. You allege that you intend to file legal action regarding this matter within thirty days. As such, your complaint was granted priority status pursuant to 62 IAC 1-1-3.

The Corporation did not respond to your complaint at my invitation to do so.

ANALYSIS

It is the intent of the Open Door Law that the official action of public agencies be conducted and taken openly, unless otherwise expressly provided by statute, in order that the people may be fully informed. I.C. §5-14-1.5-1. Except as provided in section 6.1 of the Open Door Law, all meetings of the governing bodies of public agencies must be open at all times for the purpose of permitting members of the public to observe and record them. I.C. §5-14-1.5-3(a). Executive sessions may only be conducted for the enumerated instances listed in the ODL. I.C. §5-14-1.5-6.1.

A “meeting” means a gathering of the majority of the governing body of a public agency for the purpose of taking official action upon public business. I.C. §5-14-1.5-2(c).

Public notice of the date, time, and place of any meetings, executive sessions, or of any rescheduled or reconvened meeting, shall be given at least forty-eight hours (excluding Saturdays, Sundays, and legal holidays) before the meeting. I.C. §5-14-1.5-5(a). Notice shall be given by posting a copy of the notice at the principal office of the public agency or at the building where the meeting is to be held if no principal office exists and by delivering to the news media who submit an annual request for notices by January 1. I.C. §5-14-1.5-5(b)

A person denied the right to attend any public meeting of a public agency in violation of I.C. 5-14-1.5 or any other right conferred by I.C. 5-14-1.5 or any other statute or rule governing access to public meetings may file a formal complaint with the counselor or may make an informal inquiry. I.C. §5-14-5-6.

Here, you make several allegations regarding the November 13 meeting of the Board. You allege the meeting notice did not contain the appropriate information related to time of the meeting. The ODL requires the Corporation to indicate in the meeting notice the date, time and place of the meeting. I.C. §5-14-1.5-5(a). “Time” is not defined in the ODL. “Time” has a number of definitions, but in my opinion the applicable definition here is “an appointed, fixed, or customary moment or hour for something to happen, begin, or end.” *Merriam-Webster’s Online Dictionary*, <http://www.merriam-webster.com/dictionary/time>, accessed December 3, 2007. It is my opinion a meeting notice must indicate the hour at which a meeting will begin. It is my opinion that a notice indicating a meeting will begin “after” or “before” another event or meeting does not meet the requirements of the ODL. See I.C. §5-14-1.5-5(a).

You inquire whether, if the meeting notice was insufficient, the votes or actions of the meeting may be declared void. The public access counselor is not granted the authority to void actions of a governing body nor to compel action of a governing body or public agency.

You further allege that while you were allowed to speak at the November 13 meeting, the Board later indicated that you will not be recognized to speak in the future. Indiana law only requires that public meetings be open; it does not require that the public be given the opportunity to speak. *Brademas v. South Bend Cmty. Sch. Corp.*, 783 N.E.2d 745 (Ind. Ct. App. 2003), *trans. denied*, 2003. The Board's indication it will not allow you to speak in the future does not violate the ODL.

Finally, you allege that the meeting agenda noted the first reading of several proposed policy changes. When you inquired as to the nature of one of the changes, you were told you could obtain the information the following day. You allege that during the meeting the proposed policy changes were neither read aloud nor distributed in writing.

A governing body utilizing an agenda shall post a copy of the agenda at the entrance to the location of the meeting prior to the meeting. A rule, regulation, ordinance, or other final action adopted by reference to agenda number or item alone is void. I.C. §5-14-1.5-4(a). If the Board took final action (i.e. voted) on the proposed policy changes and referred to the item only by agenda number or item, the final action may be void. It is my opinion the Board did not violate the ODL, though, if it did not take final action on the items.

CONCLUSION

For the foregoing reasons, it is my opinion the Corporation violated the Open Door Law by failing to provide a time for the November 13 meeting in the meeting notice. It is my opinion it is not a violation of the ODL for the Board to refuse to allow you to speak at its future meetings. Finally, the Board may have violated the ODL if it took final action on agenda items and in doing so referred to the items only by agenda number or item.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Dr. Michael Livovich, Superintendent of Schools, Hanover Community School Corporation